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# Relate

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The journal of developments in social services, policy and legislation in Ireland

## Farming in Ireland

This issue of Relate looks at various legislation and issues regarding farming in Ireland. These include the leasing of agricultural land, collaborative farming such as partnerships and share farming, occupiers' liability legislation for landowners, and health and safety on the farm for workers.

## Land leasing

The leasing of agricultural land is common in Ireland. The number of long-term land leases has almost doubled from 3,590 to 6,830 between 2011 and 2015. Many retiring farmers, or those who have inherited farmland but do not intend to farm it themselves, choose to allow active farmers to make use of their land.

The most common forms of land leasing are:

- Conacre
- Agistment
- Long-term leases

## Conacre and agistment

Conacre is the term used to describe the right to sow and harvest crops on another person's land. This informal arrangement is not a lease. If you are the landowner, you will retain the right to occupy the land while the conacre holder will have the right to till the land, sow and harvest, and go back and forth onto the land for these purposes. Conacre arrangements usually last for a period of 11 months at a time.

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If a conacre holder fails to pay the fee agreed under the conacre arrangement, you may treat this as a debt but you cannot retain the crops or interfere with their removal from the land.

Agistment is a similar right to conacre where the agistment holder has the right to graze livestock on another's land.

Both conacre and agistment were traditionally used for the specific intention of avoiding entering a lease because a lease holder would have other rights, such as the right to renew the lease.

### ***Property Services (Regulation) Act 2011***

Before 2012, conacre and agistment arrangements were often made with a minimum of formality although an auctioneer usually assisted by preparing a basic agreement.

This system has changed dramatically since the enactment of the Property Services (Regulation) Act 2011. Section 43 of this Act states that if a landowner or conacre holder engages an auctioneer for any purpose, including the arranging of conacre or agistment, that auctioneer must provide a signed letter of engagement setting out the terms and conditions of the engagement. These terms should include the fee the auctioneer intends to charge. The letter of engagement must be provided to you within seven working days of you engaging the auctioneer.

Before 2012, the conacre agistment holder would usually pay the auctioneer's fee. Now the fee must be paid by the person who engages the auctioneer.

Since 2012, it is open to either party to make a complaint about an auctioneer to the Property Services Regulatory Authority if either party believes the auctioneer has acted improperly or dishonestly in their dealings.

### **Long-term land leases**

A land lease is a written legal agreement between a lessor (landowner) and a lessee (active farmer). A lease agreement must be signed by both parties and the signing must be witnessed by an independent person. In order to avail of the income tax reliefs available on lease income, a lease must be stamped by Revenue (see below).

A lease sets out the obligations of both parties during the term of the lease. You should seek assistance from a professional advisor when preparing a lease so that the terms can be tailored to the needs of the parties.

A lease will include details of:

- The term – generally longer than five years

- Annual rent and rent payment procedure
- Rent review clause
- Details of the land use and the upkeep of the land
- Who is responsible for what insurance
- Treatment of basic payment entitlements
- Restrictions on subletting
- Farm buildings should be dealt with separately
- Renunciation preventing the tenant from accruing an automatic right of renewal

In order to qualify for income tax incentives, land must be leased for a minimum of five years but can be leased for up to 25 years. The lease duration determines which income tax threshold will apply (see page 3).

### ***Registering with the Property Services Regulatory Authority***

Since 3 April 2012, a signed commercial lease needs to be registered with the Property Services Regulatory Authority (PSRA). To do this, you need the Revenue Certificate Identification Number (Stamping Document ID).

The tenant (or a third party authorised by the tenant, for example, their solicitor or auctioneer) must provide the following information to the PSRA:

- Commencement date of the lease
- The rent (if any) being paid for the lease
- Any capital contribution paid in respect of the property
- The frequency at which the rent will be reviewed
- Details of who is liable (tenant/landlord) for rates, insurance, service charges and repairs to the property
- Details of any break clause in the lease

There is no charge for registering a lease.

### ***Income tax relief***

If you are a landowner, you may be able to claim income tax relief on the lease income you receive from the long-term leasing of your farmland. Your farmland must be in Ireland and the tax relief cannot operate to create a loss. You cannot lease your land to a close relative and avail of tax relief.

For your lease to qualify for tax relief it must be:

- In writing or evidenced in writing
- For a definite term of five years or more
- For the purpose of working the land with the aim of taking produce from the land, for example, normal farming, market gardening, horse breeding, cattle dealing or fruit growing

The tenant must use the leased land for the purpose of carrying on a farming trade.

The profit from the letting of the farmland is assessed by Revenue as rental income. The relief is given as a reduction (up to a maximum limit) of your total taxable rental income.

You will only qualify for one reduction regardless of the number of qualifying leases you may have.

The maximum reduction allowed each year for leases entered into on or after 1 January 2015 is:

Lease term	Amount
Five years or more but less than seven years	€18,000
Seven years or more but less than 10 years	€22,500
10 years or more but less than 15 years	€30,000
15 years or more	€40,000

You should obtain legal advice from a solicitor before entering into any lease and especially in a situation where the lease will be greater than 21 years and the tenant may obtain a right of renewal.

### Stamp duty

Land lease agreements that comprise a written document are liable for stamp duty. It is a one-off payment payable by the tenant at a rate of 6% of the annual rent payable under the lease and any premium. For example, if the annual rent payable on leased land is €10,000, stamp duty of €600 is payable on the land lease agreement.

Certain exemptions from stamp duty may be available to you, such as the Young Trained Farmer Relief, and Consanguinity Relief.

These reliefs have specific qualifying criteria so you should discuss these matters with your professional advisor.

### Basic Payment Scheme (BPS) entitlements

If you are leasing Basic Payment Scheme (BPS) entitlements with your land, you must notify the Department of Agriculture, Food and the Marine to ensure that the entitlements remain in your name and will revert to you at the end of the lease term. A *Transfer of Basic Payments Scheme Entitlements Form* is available from the Department or your local Teagasc office. You can also use an online form available on [agfood.ie](http://agfood.ie) on the Department's website, [agriculture.gov.ie](http://agriculture.gov.ie).

The terms and conditions of the lease should provide for the leasing of BPS entitlements and you should discuss these matters with your professional advisor.

## Collaborative farming

Collaborative farming is the term used to describe various arrangements between farmers who share resources for mutual benefit. The Irish farming sector currently faces specific difficulties, for example, in 2013 almost half of all farm holders were aged between 45 and 65 years, with just 6.2% aged under 35 years. Such difficulties pose a threat to the viability of Irish farming in the future. Collaborative farming can address some of these issues.

The main forms of collaborative farming include:

- Registered farm partnerships
- Share farming (mainly used in the crops sector)
- Contract rearing of replacement heifers

### Registered farm partnerships

A farm partnership occurs when you and at least one other farmer combine farming operations into one business for mutual benefit, without the use of a limited company. You will agree terms under which you will share resources such as land, machinery, facilities and labour in return for a share of the combined profits.

The benefits of farm partnerships include:

- Increased efficiency by consolidating resources and developing new business strategies
- Sharing workloads to cope with the extra work involved in upscaling and applying new technologies
- Introducing new skills, specialisations and occupational preferences to enhance the operation of the farm
- Shared decision-making power between members of farm families (spouses, heirs)
- Less isolation in farmers' working lives
- Improved farm safety
- Allowing farmers time off

You can only be a partner in one registered farm partnership at any one time.

There is no transfer of ownership of your land or resources when forming a partnership. All lands and assets, for example, production rights, entitlements under the Basic Payment Scheme and other Department schemes, are licenced to the farm partnership. These licences should be included in the written partnership agreement.

## ***Partnership agreements***

Farm partnerships are regulated by the Partnership Act 1890 and the Registration of Farm Partnerships Regulations 2015.

In order to register a farm partnership with the Department of Agriculture, Food and the Marine, a written partnership agreement is required. Without such an agreement the terms of the partnership, by default, would be dictated by the 1890 Act, which is often unsuitable.

A written partnership agreement should be prepared by a professional advisor.

The basic terms in a partnership agreement include:

- Procedure for individual partners joining and leaving the partnership
- How decisions are made in the case of deadlock
- How capital is introduced to the partnership and how it may be repaid
- Distribution of profits and losses among the partners
- What happens if a partner dies or retires

A farm partnership has unlimited liability, which means that each partner is personally liable for the debts of the partnership. Partners are also joint and severally liable, which means that a debt of the partnership can be collected from one, several or all the partners, and each partner is held to be equally responsible for the entire partnership. The harmful action of just one partner will become the liability of all the partners if that harmful action was done on behalf of the partnership in the ordinary course of its business.

## ***Registering your partnership***

Registration of farm partnerships is governed by the Registration of Farm Partnerships Regulations 2015. The Department of Agriculture, Food and the Marine maintains the register of farm partnerships. Entry on the register is a precondition for access to the Department support schemes. By the end of 2016, the number of farm partnerships on the register stood at 1,600.

In order to be registerable, farm partnerships must satisfy the following conditions:

- The partnership is engaged in the trade of farming
- The partnership consists of at least two persons but not more than 10 persons
- The partnership has a written partnership agreement including details of the partners, their shares in the partnership, land farmed by the partnership and matters relating to the operation of the partnership

- The partnership operates in accordance with the Partnership Act 1890
- The partnership commits to a period for operation of the partnership agreement of not less than five years
- Unless otherwise approved by the Minister in writing, no partner is in occupation of farmland outside the farm partnership at any time during the period of registration
- Unless otherwise approved by the Minister in writing, all payments to the partners arising from the trade of farming shall be paid to the farm partnership
- The partnership agrees to co-operate with inspections and provide such information as the Minister may reasonably require at any time during the period of registration to ensure compliance with registration
- The farmland of partners in occupation of land shall not be more than 50 kilometres from the farmland of another partner
- The partnership agrees to notify the Minister within 21 days of any material change to the farm partnership or its activities

If a limited company is one of the partners, none of that company's individual directors or shareholders can be a partner in the same partnership.

At least one partner must have been engaged in the trade of farming on land owned or leased by that person consisting of at least three hectares of useable farm land for at least two years immediately before the date of formation of the partnership. All other partners must have been similarly engaged, or have a suitable agricultural qualification and hold an entitlement to at least 20% of the profits of the farm partnership.

The Department will assign a unique Farm Partnership Reference Number to registered farm partnerships. This number should be used as the scheme application number when applying for Department support schemes.

## **Share farming**

Share farming is an arrangement where two parties, a landowner and a share farmer, carry on separate farming businesses, usually crop growing, on the same land without forming a partnership or limited company.

The landowner usually provides land, buildings, fixed equipment, major upkeep and repairs. The landowner may agree to make a financial contribution to the other party. The landowner may also provide management and farming expertise.

The share farmer usually provides mobile machinery, their labour, management and farming expertise. The share farmer may also agree to make a financial contribution to the other party.

Each party can independently sell their share of output and equally cover their input costs. There are no fixed annual payment for the land made to the landowner. There are no contractor or hire payments made to the share farmer for the use of any machinery that they own.

The share farmer and landowner keep their own accounts and calculate their own profits as separate and independent businesses. It is important that there is no question of profit sharing so as to avoid the arrangement being classed as a partnership (see page 3). This is the primary distinction of share farming.

As both parties remain operating as separate business entities each may continue to claim supports such as Basic Payment Scheme entitlements in their own name and also maintain separate tax affairs.

### ***Benefits of share farming***

The benefits for the landowner include the use of machinery and access to the expertise of the share farmer and the increased output from the land. The landowner also retains control of their land, unlike other arrangements. Share farming is compliant with all existing support schemes.

The benefits for the share farmer include a new way to access land and facilities that can increase production capacity. There are no upfront or other flat rate payments to be met. An improved and stable land base can facilitate better planning in both the short- and long-term.

Both parties benefit from increased buying and selling power as part of a larger unit.

### ***Written agreement***

The details of the share farming arrangement should be set out in a written agreement. Professional advice should be obtained to ensure the arrangement could not be construed as a partnership or property transaction. The agreement should be in place before share farming commences.

The basic terms in a share farming agreement include:

- The duration of the arrangement
- The precise lands to be provided by the landowner

- How produce will be stored, marketed and sold
- Insurance
- Who is to provide what resources (for example, seeds, machinery)
- Procedures for resolving disputes
- Dissolution notices and procedures

Both parties, as well as any other owner on the title of the lands, for example, the landowner's spouse, should be parties to the agreement.

A guide to share farming and a sample agreement are available on the Teagasc website, [teagasc.ie](http://teagasc.ie).

## **Contract rearing of replacement heifers**

Contract rearing of replacement heifers is an arrangement whereby one farmer moves their replacement heifers from their own land to the land of another farmer who will rear the animals.

Milk quotas were abolished in 2015, which meant that Irish farmers could increase their milk production. Dairy farmers can benefit from freeing up more land and labour for milk production.

Rearers benefit by using more of their land and buildings without having to purchase more stock. They can also avoid the risks associated with dry stock production. The rearer's cash flow can be improved where they are paid for this service on a monthly basis.

### ***Written contract***

A contract for the rearing of replacement heifers should be made in writing and signed by both parties.

The basic terms contained in a contract for the rearing of replacement heifers include:

- The duration of the arrangement, usually 19 months beginning in April or May
- The payment obligations of the dairy farmer
- The rearing obligations of the rearer
- Allocation of vaccination and veterinary procedures and payment
- Insuring of the stock; this is usually the responsibility of the dairy farmer but the rearer should also notify their insurers
- Weight gain targets that the heifers should reach at certain stages and procedures if targets are not met
- Procedures in the case of a deceased animal

Not having a contract, or having a badly prepared contract, can often lead to difficulties during the term.

Sample contracts are available on the Teagasc website, [teagasc.ie](http://teagasc.ie). The website also provides a costing calculator for rearers and a comprehensive guide to the contract rearing of replacement heifers.

## Occupiers' liability

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Agricultural lands, like other open spaces, are becoming increasingly attractive to recreational users such as hill walkers and dog walkers. The Occupiers' Liability Act 1995 was introduced to address the exposure of landowners and occupiers to claims arising from injuries to visitors, recreational users and trespassers.

Under the 1995 Act, an occupier means a person exercising such control over the state of the premises that it is reasonable to impose upon that person a duty of care towards an entrant in respect of a particular danger on the premises. Where there is more than one occupier of the same premises, for example, a landowner and a tenant, the extent of the duty of each occupier towards an entrant depends on the degree of control each of them has over the state of the premises, the particular danger on the premises and whether the entrant is a visitor, recreational user or trespasser.

### Categories of entrant

There are three categories of people who may enter a premises:

- Visitors
- Recreational users
- Trespassers

#### Visitors

A visitor is someone who is on a premises and fulfills one of the following criteria:

- Is there at the invitation or with the permission of the occupier or a member of their family
- Is a member of the occupiers' family who is ordinarily resident on the premises
- Is an entrant who is present on the premises of the occupier for the purpose of an express or implied term in a contract, for example, an employee or supplier

#### Recreational users

A recreational user is someone who is on a premises, with or without the occupier's permission or at the occupier's implied invitation, without a charge being imposed (other than a reasonable charge for vehicle parking) for the purpose of engaging in a recreational activity, for example, hill walking or visiting a historical building. The term recreational user does not include people who are visitors.

#### Trespassers

A trespasser is anyone who is on a premises other than a visitor or a recreational user.

### Occupiers' duty of care

If you are the occupier of a premises, you owe a different duty of care to visitors than you do to recreational users and trespassers.

A higher duty of care is owed to visitors. It consists of a duty to take such care as is reasonable in all the circumstances to ensure that a visitor to the premises does not suffer injury or damage by reason of any danger which may exist on the premises. However, this duty does not have regard to the care that a visitor may reasonably be expected to take for their own safety.

In addition, if a visitor is on a premises with another person, for example, a child in the company of their parent or teacher, regard will be had for the extent of the supervision and control the latter person may reasonably be expected to exercise over the visitor's activities.

A lesser duty is owed to recreational users and trespassers. In respect of a danger existing on a premises, you have a duty not to intentionally injure or to act with reckless disregard for, the person or their property.

### Notices or agreements

You may, by agreement or notice, restrict, modify or exclude your duty towards visitors. For example, many car parks limit their liability under the 1995 Act by having notices stating that vehicles are parked at the owner's risk.

In general, a restriction, modification or exclusion will not have legal effect unless it is reasonable in the circumstances, and you have taken reasonable steps to bring the notice to the attention of the visitor. For example, notices should be prominently displayed at the normal means of access to the premises.

A valid restriction, modification or exclusion does not allow you to intentionally injure or to act with reckless disregard for a visitor or their property.

Where injury or damage is caused to a visitor or their property by a danger of which the visitor had been warned, the warning will not absolve you from liability unless, in all the circumstances, it was enough to enable the visitor to avoid the injury or damage.

## Defending your dwelling

Approximately two-thirds of Irish farmers have been affected by crime related to their farming enterprise.

Section 4 of the Occupiers' Liability Act 1995 states that where a person enters a premises for the purpose of committing an offence or, while present commits or attempts to commit an offence, the occupier shall not be liable for a breach of their duty owed to trespassers unless a court determines otherwise in the interests of justice.

Since 2012, specific provisions have been introduced in relation to dwellings. The Criminal Law (Defence and the Dwelling) Act 2011 allows occupants to use force to defend their dwelling against a person who enters illegally. Section 2 states that it will not be an offence to use such force against such a person provided you believe that the person is a trespasser who intends to commit a crime.

The level of force that you can use must be reasonable to the circumstances as you honestly perceive them. The 2011 Act recognises that even force that causes death can, in certain circumstances, be justified.

Section 5 of the 2011 Act states that where an occupant uses a reasonable level of force, they will not be liable to compensate the trespasser for any injuries that may result.

## Health and safety

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In 2017, 24 people died on Irish farms. A person is eight times more likely to die whilst working on a farm in Ireland than in the general workforce.

### Health and safety legislation

Workplace health and safety in Ireland is governed by the Safety, Health and Welfare at Work Act 2005. The Act states that every employer must ensure, as far as reasonably practicable, the safety, health and welfare at work of their employees. The provisions of the Act apply to both employees, including fixed-term and temporary workers, and self-employed individuals. The Act also

applies to persons coming to the place of work in the course of their employment, for example, veterinarians and milk lorry drivers.

### Risk assessments

A place of work includes any place where work is carried out including a farm. If you are an employer or self-employed individual who has control of a place of work, you must carry out an assessment of that place of work to identify the hazards that are present and the risks associated with those hazards. This document is called a risk assessment. Guidance on carrying out a risk assessment on a farm is available on the Health and Safety Authority website, [hsa.ie](http://hsa.ie).

You should review your risk assessment if there has been any significant change in the matters to which it relates, or there is some other reason to believe that it is no longer valid.

Once a risk assessment has been carried out you must take steps to implement its recommendations across all activities and levels of the workplace.

### Safety statements

You must prepare a written document, known as a safety statement, based on the identification of hazards and the risk assessment carried out. The safety statement should set out how the safety, health and welfare at work of employees shall be secured and managed.

A safety statement should include:

- Hazards identified and the risks assessed
- Protective and preventive measures taken
- Plans and procedures to be followed and the measures to be taken in the event of an emergency or serious and imminent danger
- Employees' duties regarding safety, health and welfare at work, including co-operation with the employer in matters of health and safety
- Details of each person responsible for performing tasks under the safety statement
- The arrangements for appointment of safety representatives

In a workplace with less than three employees, it is sufficient to observe the terms of a general code of practice relating to safety statements. In 2017, the Health and Safety Authority produced the revised *Code of Practice for Preventing Injury and Occupational Ill Health in Agriculture* commonly known as the *Farm Safety Code of Practice*. The Code is available on the Health and Safety Authority website, [hsa.ie](http://hsa.ie).

The Citizens Information Board provides independent information, advice and advocacy on public and social services through [citizensinformation.ie](http://citizensinformation.ie), the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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The Code offers practical advice on various matters such as the safe use of vehicles and machinery, safety when working with livestock, slurry storage, gas safety and the safe use of chemicals on the farm.

The safety statement and risk assessment should be brought to the attention of all employees on the farm, family members and those who visit the farm in the course of their work.

An inspector from the Health and Safety Authority may examine the risk assessment and safety statement and may assess the implementation of health and safety measures on your farm. If the inspector believes there has been a breach of the health and safety legislation, they may issue an improvement notice. It is a criminal offence to contravene an improvement notice.

## Training

The Health, Safety and Welfare at Work Act 2005 places a strong emphasis on the training of employees. It states that employees should receive instruction, training and supervision as well as adequate safety, health and welfare training. This includes information and instructions relating to the specific task(s) to be performed by the employee and the measures to be taken in an emergency.

The employee's capabilities in relation to safety, health and welfare should be taken into account when assigned a task.

Training should be repeated periodically and should be provided on recruitment, where an employee changes tasks, and where new work equipment or technology is introduced.

Teagasc is the national body that provides training to the farming sector. It offers further education courses in agriculture across a variety of areas including the *Farm Safety Code of Practice*.

Farms are generally located in rural areas where access to medical treatment and transport via ambulance are restricted. First aid training for you and your employees should also be considered. The Irish Red Cross offers specific first aid courses for the farming sector.

## Safe place of work

Section 8 of the Act states that you must provide a safe place of work.

You should ensure:

- The workplace is maintained in a safe condition without risk to health
- The means of access to, from and around the workplace are kept safe
- That any plant and machinery or similar items are maintained and kept safely

These provisions can arise in a variety of ways, for example, maintaining or erecting fencing and gates, and placing clear warning notices near dangerous areas such as slurry pits and overhead power lines.

## Duty to report an accident

If an accident does happen in your workplace, it may need to be reported to the Health and Safety Authority.

The circumstances in which an accident is reportable are where:

- There is a dangerous occurrence, such as the collapse or partial collapse of a building or structure.
- The death of a worker occurs
- There is an injury to an employee after which they cannot work for more than three days
- There is an injury to a visitor or member of the public for which medical treatment is required

You can report an accident online through the Health and Safety Authority website, [hsa.ie](http://hsa.ie), or via post using the IR1 Form. You must keep a copy of the completed report form for 10 years. The Gardaí should also be notified of an accident that results in a fatality.

If you are found to be in breach of your obligations under the Safety, Health and Welfare at Work Act 2005, you may be charged with a criminal offence. Such an offence is liable on summary conviction to a fine of up to €5,000, 12 months' imprisonment, or both. Such an offence is liable on indictment to a fine of up to €3,000,000, two years' imprisonment, or both. Any failure to observe the relevant codes of practice may be admissible as evidence in such criminal proceedings.

The information in *Relate* is intended as a general guide only and is not a legal interpretation